IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.939 OF 2005
IN
COMPANY APPLICATION NO.180 OF 2005
IN
COMPANY PETITION NO.166 OF 2002

Satish Kumar Modi — Appellant
vs.
1. N.R.B.Bearing Ltd. & ors. — Respondents

Mr.N.H.Seervai, senior counsel i/b.Mr.S.A.Shah for the appellant.

Ms.A.M.Bhambwani, advocate for the respondents.

Mrs.K.V.Gautam, Deputy Official Liquidator.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 21st November 2005

P.C.

Heard.

2. Flat No.10 admeasuring 330 square meters carpet area in Shangrila Building, 27-A, Carmichael Road, Mumbai-400026 along with Garage No.10 is in the tenancy of the Company-Modistone Ltd. The said company has gone in liquidation and the Official Liquidator has been appointed to wind up the said company.

3. The landlord-the present respondent no.1 made an application before the Company Judge for direction to

the Official Liquidator to hand over the possession of the said premises to them without any encumbrance. The present appellant was also added as party in the said application.

4. Before the Company Judge, the Official Liquidator made the statement that the subject premises were not required for the activities of the Company in liquidation.

5. However, the present appellant contested the application and submitted that various proceedings concerning the said flat are pending before the Small Causes Court. These proceedings are: (1) the appeal filed by the present appellant against dismissal of his Suit for injunction; (2) the appeal filed by the landlord against the dismissal of his Suit for eviction and (3) the Suit for eviction filed by the landlord under the new Rent Control Act. The appellant, thus, submitted before the Company Judge that until the disposal of the said proceedings, he cannot be dispossessed from the subject premises.

6. The learned Company Judge found that the present appellant has not been held to be tenant by any Competent Court to remain in occupation on the subject premises in his own rights. The premises are in the

tenancy of the Company and after the Company has gone in liquidation and the Official Liquidator has been appointed and when the subject premises were not required for the activities of the Company in liquidation, the subject premises must be handed over to the landlord without any encumbrance.

7. Mr.N.H.Seervai, the learned senior counsel for the appellant, relied upon the judgment of the Supreme Court in the case of Smt.Nirmala R.Bafna vs. Khandesh Spinning and Weaving Mills Co.Ltd., **1992 Mah.Rent Control Journal 498**. He would submit that the tenancy rights of the Company have not undergone any change merely because the company went in liquidation. The rights of the Company vis-a-vis landlord does not undergo any change on the Company going in liquidation. He heavily relied upon paragraph 18 of the said judgment which reads thus:

> "18. It is admitted by the official liquidator that the Board of directors of the company had indeed passed a special resolution affirming the agreement of sub-tenancy in favour of the appellant. (In her plaint in suit No.4873 of 1984 the appellant has referred to the said special resolution of the Board of directors.) This facts coupled with the statement of the learned counsel for the landlord-trust establishes, prima facie the appellant's plea of sub-tenancy. That she was in possession of a major portion of the said flat on the date of appointment of liquidator is also not in dispute.

> According to the sub-tenancy agreement, the rent payable by; the appellant is Rs.600/- per month as against Rs.900/- per month payable by the company to the landlord for the entire flat. In the above circumstances, we cannot reject, prima facie speaking, the appellant's claim of protection of Bombay Rent Control Act. In addition to this factual situation, there are two other circumstances which must be taken into consideration. viz:
>
> (a) The tenancy rights the company had in the said flat may not be an asset for the purpose of liquidation proceeding; and
>
> (b) Merely because a company goes in liquidation and a liquidator/official liquidator is appointed, the rights of the company viz-aviz its landlord and/or its tenants do not undergo any change."

8. The judgment of the Supreme Court in the case of Smt.Nirmala R. Bafna (supra) does not apply to the facts of the present case. The glaring feature that distinguishes the facts of the present case from the facts in the case of Smt.Nirmala R.Bafna is that in that case the occupant of the flat which was in the tenancy of the Company in liquidation claimed her right as a subtenant of the premises from the company. In the present case, nothing was shown to us that could prima facie lead us to believe that the appellant was occupying the subject flat in his own right and independent of the rights of the Company. The appellant has failed to establish his independent right to remain

in occupation of the flat in question.

9. In so far as the Company is concerned, the Official Liquidator made a categorical statement before the learned Company Judge that the subject premises were not required for the activities of the Company in liquidation.

10. If the Official Liquidator does not require the tenanted premises for beneficial winding up of the company, we find no impediment for the Company Court in passing an appropriate direction for handing over possession of the premises to the landlord.

11. The Division Bench of this Court in the case of Saraswat Co-operative Bank Ltd. v. Chandrakant Maganlal Shah, **AIR 2002 Bom.203** relied upon the judgment of the Supreme Court in the case of Ravindra Ishwardas Sethna v. Official Liquidator, High Court, Bombay, AIR 1983 SC 1061 and held in paragraph 26 of the report thus:

> "26. The reliance of Ms.Anklesaria on the judgment of the Supreme Court in Ravindra Ishwardas Sethna v. Official Liquidator, High Court, Bombay, AIR 1983 SC 1061 is fully justified. The Supreme Court held in this case that when a company is being wound up and the liquidator of the Company takes over tenanted premises then if the Liquidator does not require the premises for

> carrying on the business of the Company under S. 457 of the Companies Act or for the beneficial winding up of the company, then the possession of the premises must be handed over to the landlord. In the instant case, the facts before us show that the business of the company was defunct for several years even before the winding up order was made. The Liquidator admitted before the learned company Judge and before us that he does not require the tenanted premises for beneficial winding up of the company. In these circumstances, the ratio of the judgment of the Supreme Court in Ravindra Sethna (supra) is clearly applicable. We, therefore, find that the learned Company Judge was justified in making the Company Application absolute in terms of prayer (a)."

12. The order passed by the learned Company Judge is in conformity with the decision of the Supreme Court in the case of Ravindra Ishwardas Sethna and the Division Bench judgment of this Court in Saraswat Cooperative Bank Ltd.

13. No interference is called for in the impugned order.

14. Appeal is dismissed in limine.

15. We grant two months time to the appellant to vacate the subject premises and for handing over the said premises to the Official Liquidator. The Official Liquidator shall then hand over possession of the said premises without encumbrance to the landlord-respondent

no.1 as directed by the learned Company Judge.

16. We record and accept the statement made by the learned senior counsel on behalf of the appellant that no encumbrance of any nature shall be created in the subject premises during this period.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)